

Branding Iron.

OFFICIAL PAPER OF THE CHOCTAW NATION.

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ATOKA, INDIAN TERRITORY, MARCH 15.

THE FREEDMEN QUESTION.

[COPY.]

DEPARTMENT OF THE INTERIOR,
WASHINGTON, Feb. 25, 1884.
Commissioner of Indian Affairs:

SIR:—I have considered your report of February 6th, 1884, on the subject of a statute enacted by the Choctaw Nation of Indians in the Indian Territory, entitled "An act to adopt the freedmen of the Choctaw Nation" which comes up on an appeal of the Choctaw Delegates from your decision of June 18, 1883, declaring that the statute referred to does not meet the requirements of the provisions of the treaty of April 28, 1866. (14 Stat. 769-70).

The statute of the Choctaw Nation under consideration, a copy of which accompanied your report, was enacted in pursuance of the authority granted by the Act of Congress of May 17, 1882, (22 Stat. 73) which appropriated \$10,000 out of the \$300,000, reserved by the third article of the treaty with the Choctaws and Chickasaws concluded April 28, 1866, for the purpose of educating freedmen in said tribes, and which provided "that either of said tribes may, before such expenditure, adopt and provide for the freedmen in said tribes in accordance with said third article."

The third article of the treaty referred to provided that said \$300,000, the price agreed upon for certain lands ceded by said treaty, shall be invested and held in trust for said Nations "until the legislatures of the Choctaw and Chickasaw Nations respectively shall have made such laws, rules and regulations as may be necessary to give all persons of African descent, resident in the said nations at the date of the treaty of Fort Smith, and their descendants, hereafter held in slavery among said nations, all the rights, privileges and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys and public domain claimed by or belonging to said nations respectively."

The third article contains other provisions relating to land for said freedmen, and the disposition of said freedmen, and of the said \$100,000 upon failure of the Choctaw and Chickasaw nations to make the laws, etc., required.

In the fourth article of said treaty it is provided "that all laws shall be equal in their operation upon Choctaws, Chickasaws and negroes, and that no distinction affecting the latter shall at any time be made."

It was claimed for the Choctaws that they have always been desirous of making the laws, rules and regulations required by the treaty, but they could not secure the cooperation or concurrent action of the Chickasaws in the matter; hence Congress made provision in the law of May 17, 1882, above referred to which enables members of said nations to comply with the treaty.

The statute enacted by the Choctaws on the subject, provides that the freedmen and their descendants, referred to in the treaty are hereby entitled to all the rights, privileges, and immunities, including the right of suffrage of citizens of the Choctaw nation, except in the annuities, moneys, and the public domain of the nation; to equal rights in the courts and free protection of persons and property; to forty acres of land to be selected and held under the same title and upon the same terms as the Choctaws; to equal educational privileges and facilities in neighborhood schools; and that all said persons who do actually remove from said nation, shall be entitled to \$100 per capita, as per the third article of the treaty of 1866; and that such as decline to so remove, or to become citizens of the Choctaw Nation shall be held as intruders on same footing as other citizens of the United States residing in the nation, and subject to removal or similar enactments.

The portions of the law against which objections are made by your office are the 7th and 8th sections thereof, which read as follows:

"Sec. 7. Be it further enacted, That intermarriage with such freedmen of African descent who were formerly held as slaves of the Choctaws and have become citizens shall not confer any rights of citizenship in this nation; and all freedmen who have married or who may hereafter marry freedwomen, who have become citizens of the Choctaw nation are subject to the permit laws and allowed to remain during good behavior only."

"Sec. 8. Be it further enacted, That all such persons of African descent who have become citizens of the Choctaw nation shall be entitled to hold any office of trust or position in this nation except the office of Principal Chief and District Chiefs."

Our objection to the 7th section of said statute is that it is in violation of the provisions of the 4th article of the treaty of 1866 above quoted, in that it declares that intermarriage with freedmen and freed-

men shall confer no rights of citizenship upon persons so intermarrying, while the act of 1875 confers the right of citizenship on any citizen of the United States or foreign government who intermarries with a Choctaw citizen.

A further objection urged is that said statute debars from citizenship persons who have heretofore intermarried with Choctaw freedmen or freedwomen."

On these two points you report that the statute discriminates against the freedmen and makes a "distinction affecting" them. Also that the clause "all freedmen who have married or who may hereafter marry freedmen who have become citizens of the Choctaw nation are subject to the permit laws," etc., is ambiguous in that it may mean the freedmen referred to in the treaty or freedmen generally not within the Choctaw nation, and in either case it discriminates against the Choctaw freedmen and their descendants.

By reference to the Choctaw statute of Nov. 9, 1875, a certified, though apparently imperfect, copy of which is with the accompanying papers it is found to "require that any white man or citizen of the United States or of any foreign government desiring to marry a Choctaw woman citizen of the Choctaw nation, shall obtain a license from the designated judicial officers, make proof that he has not a surviving wife from whom he has not been unlawfully divorced, produce certificate of good moral character signed by at least ten respectable Choctaw citizens by blood, shall take a prescribed oath to defend and submit to the Choctaw constitution, etc.; and that should any man or woman a citizen of the United States or of any foreign country become a citizen of the Choctaw nation by intermarriage and be left a widow or widower shall continue to enjoy the rights of citizenship unless he or she shall marry a white man or white woman or person as the case may be having no rights of Choctaw citizenship by blood, in that case all his or her rights acquired under the provisions of this act shall cease" and that "every person who shall lawfully marry under the provisions of this act and afterwards abandon his wife shall forfeit every right of citizenship and shall be considered intruder."

The delegates of the nation in their appeal lay down "as a fundamental principle, upon which the Choctaw government rests, that nothing but the blood on one side or the other can confer citizenship by intermarriage." That the general law of intermarriage with white persons is found in the 6th article of the treaty of 1866 which reads as follows:

"Every white person who having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw nation, or who has been adopted by the legislative authorities, is to be deemed a member of said nation, and shall be subject to the laws of the Choctaw and Chickasaw nations according to his domicile, and to prosecution and trial before their tribunals and to punishment according to their laws in all respects as though he was a native Choctaw or Chickasaw."

They claim that intermarriage with no one but a Choctaw or Chickasaw by blood or nativity can confer rights of citizenship under said article of the treaty; and that a white person securing Choctaw citizenship by such intermarriage cannot confer citizenship upon outsiders; that as no provision was made in the 38th or any other article of the treaty about intermarriage of Choctaw freedmen is sufficient evidence that nothing of the kind was intended, and that in the absence of any treaty provisions thereto no freedmen other than a Choctaw freedman can become a citizen of the Choctaw nation.

I am not satisfied that this is the correct interpretation of the treaty. That treaty left it optional with the Choctaw and Chickasaw nations whether or not they would make such laws, rules and regulations as may be necessary to give their late freedmen and their descendants all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations"; that option was attended with such conditions that said freedmen in any event would, in a measure be provided for. The absence of any provision in the treaty on the subject of intermarriage by said freedmen with outside persons is due, most probably, to the fact that their status whether in the nation or out of it, was not then permanently fixed, but was left to future determination by the Choctaws and Chickasaws, or by the United States government as the treaty provides.

There is room for doubt whether the restriction of the Choctaw statute of May 21, 1883, upon non-Choc-
taw citizens who shall marry said Choctaw freedmen, and their descendants is a denial to said freedmen and their descendants of any of such rights, privileges and immunities, of Choctaw citizens as are contemplated by the provisions of the treaty. Is the question of marriage or of citizenship by intermarriage reasonably within the term "rights, privileges and immunities, including the right of suffrage of citizens of

said nations" as used in the treaty? If not, then there can be no objection under the treaty to the provisions of the seventh section of said statute.

If, however, such question is within the meaning and intent of the treaty it will be necessary to consider whether the restriction of the statute is strictly upon said freedmen and their descendants. Are they prohibited from marrying non-citizens of the Choctaw nation? No such prohibition is imposed by the statute. The restriction is upon such non-citizen as shall intermarry with said freedmen, in that it denies to them—the non-citizen—any right by reason of such intermarriage, of citizenship in said nation.

It is also urged by you that the statute of May 21, 1883, debars from citizenship persons who have heretofore intermarried with Choctaw freedmen, as well as those who may hereafter so intermarry, and that it thus discriminates against the freedmen, and makes a distinction affecting them contrary to the express provision of the fourth article of the treaty above quoted.

To this I reply that the third article of the treaty designates the persons for whose benefit the laws, rules and regulations are required to be made as "all persons of African descent, resident in said nations at the date of the treaty of Fort Smith, and their descendants, hereafter held in slavery among said nations."

The laws, etc., of the nation are not required by the treaty to provide for any other negroes or freedmen than those thus specifically described. Nothing in the statute restricts any of those specified "persons of African descent" from marrying a non-Choc-
taw citizen.

As before stated the restriction of said statute is not upon the Choctaw freedmen, but upon the non-Choc-
taw citizens, and I am therefore of the opinion that said statute makes no distinction affecting the freedmen or negroes referred to in the treaty.

As the Choctaw delegates have, since the date of your report, filed in this department a copy of the law of the nation approved October 26, 1883, repealing the eighth section of the statute of May 21, 1883, no further consideration of that branch of the subject is considered necessary.

This matter of these freedmen has been pending since 1883. The Choctaws have always professed willingness and readiness to comply with the treaty provisions, but claim that they have failed to secure the required cooperation of the Chickasaws; they have promptly availed themselves of the statutory privilege for separate action and I am of opinion that the statute now under consideration, as amended by the subsequent law referred to is a reasonable, substantial and sufficient compliance with the provision made therefor in the act of May 17, 1882, (22 Stat. 73) and of the third article of treaty therein referred to.

The civil rights of a citizen of a State have been defined to be "protection by the government, with the right to acquire and possess property of every kind, and to pursue and

Very respectfully,
H. M. TELLES, Secretary.

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